Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of	)	
Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services	)	CC Docket No. 94-54

To the Commission:

COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS RESELLERS ASSOCIATION

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Summary

The Telecommunications Resellers Association ("TRA") is an organization of over 300 resale carriers and their underlying service and product suppliers, all of which are committed to fostering a competitive environment conducive to resale of telecommunications services. Last year, TRA formed the Wireless Resale Council, the mission of which is to support the growth and availability of wireless communications services and to ensure a competitive marketplace for such services through the promotion of resale activities. A number of members of TRA are currently reselling certain commercial mobile radio services ("CMRS"), and others are planning to commence resale of such services in the near future.

TRA generally adheres to the view that marketplace forces are preferable to regulation for purposes of promoting the efficient provision of affordable, diverse telecommunications services; however, marketplace forces only work in markets in which significant competition exists. None of the CMRS industries has been shown to be perfectly competitive, least of all the cellular services market. Indeed, local cellular markets are generally characterized by the existence of only two providers and there is evidence that they are far from competitive, thus highlighting the need for competition -- and rules to foster competition -- in those markets. It is too early to speculate as to the competitive effect, if any, that emerging CMRS technologies, such as Personal Communications Services ("PCS") and Enhanced Specialized Mobile Radio ("ESMR") will have in the market for switched wireless voice transmission, fully interconnected with the public switched network, which is the product market that TRA proposes be

the point of reference for determining CMRS provider market power. (The geographic markets that TRA proposes as the relevant markets for evaluations of market power are coterminous with the cellular service areas.)

A long line of Commission decisions establishes the value of resale to markets that are not perfectly competitive and holds that unreasonable carrier restrictions on resale of telecommunications services can be unjust and unreasonable under Section 201(b) of the Communications Act and unreasonably discriminatory under Section 202(a) of the Act. Thus, the Commission should prescribe specific, mandatory resale obligations for all CMRS providers, including a requirement that all CMRS providers furnish resellers and other competitors with direct interconnection upon reasonable request therefor and on nondiscriminatory rates, terms, and conditions.

But a policy of promoting resale, without more, is just a policy. Cellular carriers have already demonstrated an inclination -- characteristic of other carriers with significant market power -- to shirk their resale and related obligations until forced to honor them. Thus, the Commission should not rely on the good faith of carriers to implement Commission pro-resale and pro-interconnection policies; it should mandate such obligations for all CMRS providers, at least cellular carriers. Such a mandate would be consistent with each carrier's obligations under Section 201 of the Communications Act and with the requirements of Section 332(c)(1)(B). Furthermore, mandatory interconnection would be consistent with the policies and spirit of the Expanded Interconnection proceedings.

To implement its policy of promoting nondiscriminatory, unlimited resale of CMRS, the Commission should require all CMRS providers, at least cellular carriers, to: (1) permit resellers and other competing providers to directly interconnect their switches at the CMRS provider's Mobile Telephone Switching Office ("MTSO") or an equivalent CMRS provider switch; (2) provide adequate information to enable the party seeking interconnection to propose a technical plan that would be acceptable to both parties; (3) provide rates, terms and conditions of interconnection, even if set through private negotiations, that are just, reasonable, and not unreasonably discriminatory; (4) file interconnection agreements containing only such rates, terms, and conditions; and (5) require CMRS providers to unbundle their service offerings, including their airtime and ancillary services charges, to permit the public to benefit fully from resale of CMRS services.

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The Telecommunications Resellers Association ("TRA" or the "Association"), by its attorneys and pursuant to the Second Notice of Proposed Rule Making ("Second NPRM") in this proceeding, FCC 95-149 (released April 20, 1995), hereby submits its Comments in response to the Second NPRM.

I.

INTRODUCTION

For the reasons explained below, TRA believes that the Second NPRM represents movement in the appropriate direction, *i.e.*, toward reasonable resale, interconnection, and equal access policies for commercial mobile radio services ("CMRS") that are consistent with Congress's clearly stated intentions, longstanding Commission policies, and the best interests of the public. The proposals in the Second NPRM, however, do not go far enough.

TRA submits that the Commission should require all CMRS providers not only to provide unrestricted and nondiscriminatory opportunities for resale of their services, but to provide for the interconnection of their switches with the switches of other CMRS providers, including CMRS resellers, upon reasonable request and pursuant to nondiscriminatory rates, terms, and conditions, and to file with the Commission the rates, terms, and conditions of such interconnection.

Although there is some merit to the position that it may be premature to articulate specific interconnection obligations for personal communications services ("PCS"), which are as yet virtually untested, the Commission should at a minimum adopt an unequivocal general policy mandating that PCS providers provide unlimited and nondiscriminatory resale opportunities upon reasonable request.

For all other classes of commercial mobile services providers – particularly cellular carriers and any other providers which the Commission determines offer services that are or may be substitutable for cellular services, the Commission should articulate with specificity not only the resale, but the interconnection, obligations of such providers as discussed below.

II.

ARGUMENT

A. TRA's Reseller Members Have Penetrated the Interexchange Services Market and Seek to Resell Commercial Mobile Radio Services.

TRA was created to foster and promote the interests of entities engaged in the resale of telecommunications services. TRA's members -- more than 300 resale

carriers and their underlying service and product suppliers -- range from emerging, high-growth companies to well-established, publicly-traded corporations.[1] Although originally organized as an association of long distance resale carriers, TRA now numbers among its members existing and potential resellers of cellular and other commercial mobile radio services.[2]

As resale carriers, TRA's members employ the transmission, and often the switching, capabilities of underlying facilities-based network providers to create "virtual networks" to serve generally small and mid-sized commercial, as well as residential, customers, providing such entities and individuals with access to rates otherwise available only to much larger users. TRA resale carrier members also offer small and mid-sized commercial customers enhanced, value-added products and services, often including sophisticated billing options, as well as personalized customer support functions, that are generally not provided to low volume users.

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[1] The emergence and dramatic growth of TRA's reseller members over the past five to ten years have produced thousands of new jobs and myriad new business opportunities. In addition, TRA's resale carrier members have facilitated the growth and development of second- and third-tier facilities-based long distance providers by providing an extended, indirect marketing arm for their services, thereby further promoting economic growth and development. And perhaps most critically, by providing cost-effective, high quality telecommunications services to the small business community, TRA's resale carrier members have helped, and are helping, other small and mid-sized companies to grow their businesses and generate new jobs.

[2] Also included among TRA's members are facilities-based interexchange carriers ("IXCs"), foreign telecommunications administrations and carriers, Regional Bell Operating Companies ("RBOCs"), competitive access providers ("CAPs"), and facilities-based providers of certain commercial mobile radio services.

Last year, TRA formed the Wireless Resale Council, an advisory committee to the Association charged with guiding industry policy and serving TRA members as a clearinghouse of information relating to resale of wireless services. The mission of the Wireless Resale Council is to support the growth and availability of wireless communications services for individuals and businesses and to ensure a competitive marketplace for such services through the promotion of resale activities.

TRA members providing wireless resale services acknowledge and uphold their obligations to their subscribers, vendors, and the wireless industry by providing quality services at stated rates, terms and conditions. Members recognize and pledge to uphold their obligation to conduct their businesses ethically, with a high degree of integrity, and to continually strive to provide their wireless services and products consistent with established industry standards and practices and the TRA Code of Ethics. As a supplement to the Code of Ethics, the Wireless Resale Council has developed operating guidelines to which TRA members must adhere when reselling wireless communications services.

Members also recognize that to meet the needs of their wireless subscribers – be it for cellular voice or data, digital or alphanumeric paging, narrowband or broadband PCS – they are compelled to deliver only quality wireless products and services, and the related wireless equipment that supports them.

TRA's members clearly have a significantly vested interest in the resale of CMRS services, and therefore, in the outcome of this proceeding.

B. The Commission Should Order All Commercial Mobile Radio Services Providers to Permit Unlimited and Nondiscriminatory Resale of Their Services Upon Reasonable Request.

The emergence, growth and development of a vibrant telecommunications resale industry is, and continues to be, a direct product of a series of pro-competitive initiatives undertaken, and pro-competitive policies adopted, by the Commission over the past decade. Thus while TRA is generally of the view that, market forces are, all things being equal, generally superior to regulation in promoting the efficient provision of diverse and affordable telecommunications products and services, it is keenly aware that the market can be an effective regulator only if market forces are adequate to discipline the behavior of all market participants. As the Commission itself has recognized, local cellular markets are not sufficiently competitive, to provide such discipline.

TRA will show below that, at least in the cellular and cellular-like services product market, market conditions are sufficiently noncompetitive to warrant the imposition of certain regulatory safeguards and requirements to permit new firms, including resellers of cellular service, to enter the market with a reasonable chance of survival. Although the Commission has ordered every cellular licensee to permit unrestricted resale of its services, except with respect to the licensee on the other

channel block in its market,[3] it has declined to order cellular licensees to permit nondiscriminatory direct interconnection of reseller switches with the licensees' facilities.[4] Experience shows, however, that broadly worded resale policies are often ineffective in the absence of regulatory requirements to implement them.

For these and other reasons, including many of the same considerations which historically have led to the Commission's adoption of pro-resale, equal access, and interconnection policies, some degree of regulatory intervention is appropriate at this juncture if the Commission desires to provide resellers and other potential new CMRS providers with a meaningful opportunity to compete with incumbent facilities-based providers and to bring to the public the many benefits that resale has been shown to offer.

The Commission has tentatively concluded that all CMRS providers should be subject to the resale obligations applicable to cellular licensees, unless it is shown that

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[3] 47 C.F.R. § 22.901(e); Cellular Communications Systems, 86 F.C.C.2d 469, 511, 642 (1981) ("Cellular Order"), mod., 89 F.C.C.2d 58 (1982), further mod., 90 F.C.C.2d 571 (1982), appeal dismissed sub nom. United States v. FCC, No. 82-1526 (D.C. Cir. Mar. 3, 1983). With respect to such other licensees, the first licensee's resale obligations terminate after the five-year build-out period for such other licensee expires. Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, Notice of Proposed Rule Making and Order, 6 F.C.C. Rcd. 1719, 1724 (1991) ("Cellular Resale NPRM and Order"); Petitions for Rule Making Concerning Proposed Changes Proposed Changes to the Commission's Cellular Resale Policies, Report and Order, 7 F.C.C. Rcd. 4006, 4008 (1992) ("Cellular Resale Order"), aff'd sub nom. Cellnet Communications v. FCC, 965 F.2d 1106 (D.C. Cir. 1992).

[4] Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, Second Report and Order, 9 F.C.C. Rcd. 1411, 1499-1500 (1994) ("Mobile Services Second R & O"); Second NPRM at ¶ 96.

permitting resale "would not be technically feasible or economically reasonable for a specific class of CMRS providers." Second NPRM at ¶ 83 (footnote omitted). It should now take the next logical step and put some teeth in its prospective policy by promulgating specific interconnection requirements for CMRS providers.

1. The Commission's Historical Policies Promoting Resale Are Applicable to Commercial Mobile Radio Services.

The Commission has a long and distinguished history of promoting competition generally, and resale specifically, as a means of improving telecommunications services and thereby providing benefits to the public. The natural evolution of these initiatives requires the development of specific implementing rules for CMRS providers that will foster a competitive environment in which resellers and other competitive providers can enter the various CMRS markets and develop viable competitive alternatives to incumbent facilities-based providers.

In Establishment of Policies and Procedures for Consideration of Applications to Provide Specialized Common Carrier Services,[5] the Commission stated its policy favoring competition by new firms as a means of introducing new services:

> In proposing a policy favoring the entry of new specialized common carriers, we look toward the development of new communications services and markets and the application of improvements in technology to changing and diverse demands. . . . [W]e anticipate that the new

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[5] 29 F.C.C.2d 870 ("Specialized Common Carrier Services"), recon., 31 F.C.C.2d 1106 (1971), aff'd sub nom. Washington Utilities and Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir.), cert. denied, 423 U.S. 836 (1975).

> carriers would be developing new services and would thereby expand the size of the total communications market.[6]

The Commission concluded that "a general policy in favor of the entry of new carriers in the specialized communications fields would serve the public interest, convenience, and necessity," and that the communications services market "would be best served by wider sources of competitive supply."[7] To encourage the entry of competing carriers, the Commission stated that "established carriers with exchange facilities should, upon request, permit interconnection or lease channel arrangements on reasonable terms and conditions to be negotiated with the new carriers."[8]

In Establishment of Domestic Communications-Satellite Facilities by Non-Governmental Entities,[9] the Commission stated, "We are . . . of the view that multiple entry is most likely to produce a fruitful demonstration of the extent to which the satellite technology may be used to provide existing and new specialized services more economically and efficiently than can be done by terrestrial facilities." To encourage the entry of new firms, the Commission adopted several regulatory measures to prevent AT&T from using its market power to impede entry by competitors.[10] As in the Specialized Common Carrier Services proceeding, the

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[6] Specialized Common Carrier Services, 29 F.C.C.2d 870 at 881 n.12.

[7] Id. at 914, 920.

[8] Id. at 940.

[9] Second Report and Order, 35 F.C.C.2d 844, 847 (1972), aff'd in pertinent part on recon., 38 F.C.C.2d 665 (1972).

[10] Second Report and Order, 35 F.C.C.2d at 847-48.

Commission focused on nondiscriminatory interconnection as the key to entry by new firms, stating that the requirement that

> all carriers providing retail interstate satellite services (whether or not affiliated with Bell System companies) have access at non-discriminatory terms and conditions to local loop and interexchange facilities [is] necessary for the purpose of originating and terminating such interstate services to their customers.

35 F.C.C.2d at 856.

Soon thereafter and in a similar vein, the Commission required AT&T and the Bell System companies to provide interconnection with their facilities to specialized common carriers providing foreign exchange ("FX") and common control switching arrangement ("CCSA") service. The Commission explained that its prior decisions requiring nondiscriminatory interconnection were intended

> to insure that competition in the provision of interstate private line communications services [was] on a full, fair, and nondiscriminatory basis and that the specialized common carriers would not be excluded from that market by reason of the monopoly control by Bell and other telephone companies over local distribution facilities. . . . A prospective private line customer who needs FX or CCSA services for part of his communications requirements is likely to be discouraged from obtaining any private line service from a carrier which is unable to supply the local distribution required for all his needs.[11]

The Commission's recognition of the benefits of resale reached a crescendo in Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services

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[11] Bell System Tariff Offerings, 46 F.C.C.2d 413, 426 (1974), aff'd., Bell Telephone of Pennsylvania, Inc. v. FCC, 503 F.2d 1250 (3rd Cir. 1974), cert. denied, 422 U.S. 1026 (1975).

and Facilities, ("Resale and Shared Use - Private Lines").[12] The Commission explained that "numerous public benefits would ensue from unlimited resale and sharing activities, which in part entails elimination of underlying carrier tariff restrictions on resale and sharing."[13] First, "resale and sharing would create further pressures on carriers to provide their services at rates which are wholly related to costs."[14] In the presence of resale and sharing, carriers would be pressured to price services closer to costs or to demonstrate why the services should be exempted from resale and sharing. In this way, resale and sharing will assist the Commission in enforcing Sections 201(b) and 202(a) of the Communications Act.[15]

The Commission also found that the public would benefit from resale and sharing through improved management of specialized communications networks.[16] In addition, the Commission predicted that resale and sharing of private line service would reduce the waste of private line capacity resulting from customers' part-time use of their private lines, and therefore increase the efficient utilization of private line service. "In the long run," the Commission reasoned, "this should benefit all

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[12] Resale and Shared Use - Private Lines, 60 F.C.C.2d 261 (1976), recon., 62 F.C.C.2d 588 (1977), aff'd sub nom. AT&T v. FCC, 572 F.2d 17 (2d Cir.), cert. denied, 439 U.S. 875 (1978).

[13] Resale and Shared Use - Private Lines, 60 F.C.C.2d 261 at 298-99, ¶ 75.

[14] Id.

[15] Id. at 299, ¶ 76.

[16] Id. at 299, ¶¶ 77-78.

ratepayers because underlying carriers will be able to satisfy the same quantum of communications requirements at lower costs, thereby resulting in lower rates."[17]

Furthermore, the Commission predicted that resale and shared use would spur research and development:

> Resellers will want to employ the latest technological developments in order to make the most efficient use of the carriers' transmission capacity. By the same token, underlying carriers will have a new incentive to introduce new transmission technologies as soon as they develop, knowing that otherwise they may lose business to resellers.[18]

Finally, the Commission predicted that resale and shared use would benefit underlying carriers as a matter of economic theory:

> It is a well known principle of economics -- amply demonstrated throughout the history of telecommunications -- that the introduction of new sources of supply and/or service offerings results in an expansion of the market demand. Where, as here, these new sources and service offerings are possible without the addition of significant investment or resources, it is particularly advantageous.[19]

Despite the benefits resale would bring, at the time of the rulemaking proceeding, the tariffs of many carriers, including AT&T, contained prohibitions on the resale and shared use of the services offered thereunder.[20] After examining AT&T's tariff restrictions on resale and shared use of private line service, the Commission

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[17] Id. at 301, ¶ 85.

[18] Id. at 302, ¶ 86.

[19] Id. at 302, ¶ 87.

[20] Id. at 263-64, ¶¶ 4-5.

found such restrictions to be unjust and unreasonable under Section 201(b) of the Act and unreasonably discriminatory under Section 202(a).[21]

In 1980, the Commission initiated a rulemaking proceeding to develop policies concerning tariff restrictions on the resale and shared use of domestic public switched network services, in particular, MTS and WATS.[22] In analyzing incumbent carriers' tariff restrictions on the resale and shared use of MTS and WATS, the Commission applied a test propounded by the U.S. Court of Appeals for the District of Columbia Circuit in Hush-a-Phone Corp. v. US, 238 F.2d 266 (D.C. Cir. 1956) ("Hush-a-Phone") to determine whether a common carrier practice is just and reasonable under Section 201(b) of the Act.[23] The test -- which the Commission had used in earlier proceedings, and which the Commission should apply here -- asks whether a carrier practice or tariff restriction constitutes an "'unwarranted interference with the telephone subscriber's right reasonably to use his telephone in ways which are privately beneficial without being publicly detrimental.'"[24]

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[21] Id. at 264-65, ¶ 6.

[22] Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switched Network Services (Notice of Proposed Rulemaking), 77 F.C.C.2d 274 (1980).

[23] Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switched Network Services (Report and Order), 83 F.C.C.2d 167, 171-72, ¶ 8 (1980) ("Resale and Shared Use – Public Switched Network Services"), recon. denied, 86 F.C.C.2d 820 (1981).

[24] Hush-a-Phone, 238 F.2d at 269 (quoted in Resale and Shared Use – Public Switched Network Services, 83 F.C.C.2d 167 at 171, ¶ 8).

After a lengthy analysis, the Commission found "substantial evidence in the record that a number of public and private benefits may be anticipated to flow from resale and sharing of domestic public switched network services" and that "no evidence in this record . . . convincingly demonstrates that any public detriments would result if WATS, MTS, or other public switched services were not subject to resale and shared use restrictions."[25]

Relying on both the Hush-a-Phone test and the fact that no carrier was able to present justification for its tariffs' resale and shared use restrictions, the Commission found such restrictions to be unjust and unreasonable under Section 201(b) of the Act.[26] In addition, the Commission found that the tariffs' explicit refusal to provide service to resellers and sharers constituted unjustified, facial discrimination against resellers and sharers as a class "simply because of [their] status."[27] Such restrictions therefore were unreasonably discriminatory under Section 202(a).[28]

In reaching its ultimate conclusions, the Commission enumerated the many benefits of unlimited resale and shared use of MTS and WATS. First, unlimited resale would help curb price discrimination by underlying carriers:

> It is difficult to sustain price discrimination in a competitive environment where customers are free to choose among many alternative suppliers. With MTS and WATS, however, the customer has no choice but to pay

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[25] 83 F.C.C.2d 167 at 172-73, ¶¶ 9, 10.

[26] Id. at 171-72, ¶ 8.

[27] Id. at 173, ¶ 11.

[28] Id. at 173, ¶ 12.

> the tariffed rates. . . . [W]e expect resale activities to moderate certain types of discrimination in the pricing of telephone services in instances where the firm is not providing a product or service in appropriate relationship to its cost. The desired result would come about when arbitragers [resellers] . . . are free to capitalize upon attempts by the telephone company to charge different rates for the same product.[29]

Other public benefits which the Commission foresaw as a result of unlimited resale and sharing of MTS and WATS included "expansion of service options available to the public"; more efficient use of the network; expansion of the "array of choices which consumers . . . have with respect to grade of service"; increased entry and competition by new providers, "greater possibility of innovation by equipment system manufacturers, with less waste of available communications facilities through improved management techniques," and "creation of demand for new services."[30]

With respect to CMRS, both Congress and the Commission have recognized the beneficial effects of unlimited, nondiscriminatory resale. In the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993), Congress amended Section 331 of the Communications Act, 47 U.S.C. § 332, to provide:

> Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.

47 U.S.C. § 332(c)(1)(B).

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[29] Id. at 173, ¶¶ 17, 18 (footnotes omitted).

[30] 83 F.C.C.2d 167 at 178-79, ¶ 23, 180, ¶ 29, 181, ¶ 31, 184-85, ¶ 41.

Following Congress's lead, the Commission stated in the Second NPRM, that

> requiring CMRS licensees to provide resale capacity will have the overall effect of promoting competition. Prohibiting resale restrictions provides a means of policing price discrimination, mitigating head-start advantages among licensees, and providing some degree of secondary market competition (*i.e.*, retail price competition). Further, promoting resale is advantageous because resellers may be a source of marketplace innovation (*e.g.*, by adding value to the resold service). For example, a reseller may provide a customized billing service, or bundle resold service with other telecommunications services such as interexchange or cable service. Resale could increase overall demand for CMRS services and increase overall traffic on telecommunications networks, thus permitting achievement of economies of scope and scale.[31]

At the same time, the Commission recognized that incumbent licensees may resist their resale obligations:

> CMRS providers may have incentives to refuse to enter into resale arrangements with competing carriers. For example, even though carriers are permitted to charge and realize a profit from selling service to resellers, the return is higher when they provide the retail service directly to end users. Thus, absent a Commission-imposed resale obligation, it is our tentative view that carriers might very well refuse to permit other providers to resell their service. Therefore, we tentatively conclude that a mandatory general resale requirement is necessary because it will serve as an effective means of promoting competition in the CMRS marketplace.[32]

Consistent with the above, the Commission should extend to all CMRS service providers the mandatory resale obligations currently imposed on cellular carriers. None of the CMRS services markets has been shown to be perfectly competitive; and

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[31] Second NPRM at ¶ 84.

[32] Second NPRM at ¶ 86.

unless a market is perfectly competitive, the consuming public will benefit from the presence of resale carriers Even in a highly competitive market, resellers will act as a disciplining force in the marketplace, restraining the ability of encumbent facilities-based providers to either raise prices or fail to enhance service offerings. Resale carriers exist by means of intense price and service competition, generally owing their existence to their ability to offer lower rates and/or enhanced service quality and/or diversity. Resale carriers motivate their competitors to provide, and educate the consuming public regarding the potential for, better priced, higher quality and more diversified service. Only in a market where prices have been driven down to cost and information distribution has been perfected will resellers be unable to contribute and such markets exist only in theory.

Because none of the CMRS services markets, including the paging market, has been shown to be perfectly competitive,[33] the Commission should extend its mandatory nondiscriminatory resale requirements to all classes of CMRS providers to facilitate the entry of resellers into each market and to thereby reap for the consuming public the benefits of the increased competition that will result from such entry.

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[33] Although the Commission has found that the paging industry – the most competitive of the commercial mobile radio services – is "highly competitive," Mobile Services Second R & O, supra, note 4, at 1468, ¶ 140, it has not found that the industry is perfectly competitive. Thus, even in the paging market, resellers can and should play a crucial role. As noted above, the presence of resellers, even in a competitive market, brings a number of benefits to the market, including pressuring competitors to price their services closer to their costs, improving the flow of information within the market, and stimulating the introduction of new services and products, to name only a few.

Moreover, to ensure that users of commercial mobile radio services will derive the benefits of the Commission's pro-competitive resale initiatives, the Commission should promulgate specific regulatory requirements to implement its anticipated policy announcement requiring all CMRS providers to provide unlimited, nondiscriminatory resale opportunities upon reasonable request.

2. Cellular Markets Are Not Fully Competitive and The Evidence as to Other CMRS Product Markets Is Insufficient to Conclude that They Are Fully Competitive.

The Commission has sought comment on the scope of the geographic and product markets that should be considered in evaluating the state of competition among CMRS providers, Second NPRM at ¶¶ 33-34, 93-96, which is necessary to determine whether specific interconnection requirements are warranted. Id. at ¶¶41-42. Notwithstanding the admitted need for additional information, the Commission has tentatively concluded that "all commercial mobile radio services will be provided on a competitive basis by multiple facilities-based competitors in each license area in the near future, thus potentially lessening the need for regulatory intervention." Second NPRM at ¶ 36.

For the reasons discussed below, the Commission's tentative conclusion is unwarranted. Cellular markets are far from fully competitive, with substantial opportunities for anticompetitive conduct by incumbent carriers, numerous examples of which already exist. Moreover, while, as the Commission itself has acknowledged, it

is too early to predict the competitiveness of other CMRS markets,[34] in TRA's view, it is unlikely that competition generated by the development of other CMRS technologies will obviate the need for regulatory safeguards in the near future.

Almost a year ago, the United States Department of Justice conducted an "extensive investigation into the cellular industry,"[35] and concluded that local cellular markets are not competitive,[36] that incumbent cellular licensees have substantial market power,[37] and that cellular licensees exercise control over their licensed facilities akin to control of bottleneck facilities.[38]

Given these conclusions, there is no sound basis for delaying the promulgation of specific regulatory safeguards, at least with respect to cellular carriers.

a. The relevant product and geographic markets should be limited to cellular and cellular-like mobile voice services within the currently delineated cellular service areas.

TRA believes that for purposes of the Commission's market power analyses in this proceeding, the relevant product market should be defined as all switched wireless voice communications services provided over networks fully interconnected with the

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[34] Second NPRM at ¶ 29.

[35] Memorandum of the United States in Response to Bell Companies' Motions for Generic Wireless Waivers (filed with the U.S. District Court for the District of Columbia July 25, 1994) in United States v. Western Electric, Civ. Action No. 89-0192.

[36] Id. at 14-19.

[37] Id. at 13.

[38] Id. at 10.

public switched network -- i.e., cellular service and any other existing service that is comparable in technical capabilities and quality to, and therefore potentially competitive with, cellular service.[39] This product market definition is consistent with the Commission's proposed definition. Second NPRM at ¶ 95.

Clearly, paging service providers do not compete with cellular providers due to the dramatically different nature of the services they provide. Enhanced Specialized Mobile Radio ("ESMR") service providers expect to offer services competitive with cellular service, but to date ESMR providers are not providing meaningful competitive alternatives to cellular service. It remains to be seen whether PCS will provide a service that cellular subscribers will find acceptably substitutable for their cellular service.[40] The Commission has previously recognized that other CMRS technologies do not presently provide competitive alternatives to cellular service, stating that, "for purposes of evaluating the level of competition in the CMRS marketplace, the record does not support a finding that all services should be treated as a single market."[41]

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[39] Because cellular service is at the core of this product market definition, TRA proposes a geographic market defined by reference to the service areas of the cellular providers.

[40] The Commission's lack of information on the possible competitive effect that PCS and ESMR providers may eventually have on the cellular market, Second NPRM at ¶ 29, casts serious doubt over the Commission's later statement that "[g]iven the number of competitors we expect to be present in this [switched mobile voice] market in the near future [including PCS providers and possibly wide-area SMR providers], competitive market forces should provide a significant check on inefficient or anticompetitive behavior," Second NPRM at ¶ 96.

[41] Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, Second Report and Order, 9 F.C.C. Rcd. 1411, 1467, ¶ 136 (1994) ("Mobile Services Second R & O").